

ORDER NO. 1665

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Robert G. Taub, Vice Chairman;
Mark Acton;
Tony Hammond; and
Nanci E. Langle

Competitive Product Prices
Priority Mail
Priority Mail Contract 55

Docket No. MC2013-40

Competitive Product Prices
Priority Mail Contract 55 (MC2013-40)
Negotiated Service Agreement

Docket No. CP2013-52

NOTICE AND ORDER CONCERNING THE ADDITION OF PRIORITY MAIL
CONTRACT 55 TO THE COMPETITIVE PRODUCT LIST

(Issued February 22, 2013)

I. INTRODUCTION

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 55 to the competitive product list.¹ It asserts that Priority Mail Contract 55 is a

¹ Request of the United States Postal Service to Add Priority Mail Contract 55 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, February 21, 2013 (Request).

competitive product “not of general applicability” within the meaning of 39 U.S.C. 3632(b)(3). *Id.* at 1. The Request has been assigned Docket No. MC2013-40.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.*

Attachment B. The instant contract has been assigned Docket No. CP2013-52.

Request. To support its Request, the Postal Service filed six attachments as follows:

- Attachment A—a redacted copy of Governors’ Decision No. 11-6, authorizing the new product;
- Attachment B—a redacted copy of the contract;
- Attachment C—proposed changes to the Mail Classification Schedule competitive product list with the addition underlined;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and
- Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and related financial information under seal.

In the Statement of Supporting Justification, Dennis R. Nicoski, Manager, Field Sales Strategy and Contracts, asserts that the contract will cover its attributable costs, make a positive contribution to covering institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service’s total institutional costs. *Id.* Attachment D at 1. Mr. Nicoski contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

Related contract. The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The contract is scheduled to become effective on March 12, 2013. *Id.* at 4. The contract will expire 3 years from the effective date unless, among other things, either party terminates the agreement upon 30 days’ written notice to the other party. *Id.* The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *Id.* Attachment E.

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the Governors' Decision, contract, customer-identifying information, and related financial information, should remain confidential. *Id.* at 3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7.

Supplemental information. To clarify the record, the Postal Service is requested to provide written responses to the following questions. Answers should be provided to individual questions as soon as they are developed, but no later than March 1, 2013.

1. In the contract, the First Year Prices for the Second Quarter are based on the volume of the contract packages shipped during the previous quarter. The relevant provision references a chart "outlined below." However, unlike the Third and Fourth Quarter Prices for the First Year, no chart is outlined in section I.G.2. Please clarify how the Second Quarter prices in the First Year will be determined. See *id.* Attachment B at 2.
2. In section VI of the contract, an exception to the parties' inability to amend the contract appears to have been intended. Please clarify what was intended by this exception. See *id.* at 4.
3. In the contract, the First Year Prices for the Third Quarter are based on the volume of the contract packages shipped during the First Quarter rather than the Second Quarter. See *id.* at 2. Does this language accurately reflect the intent of the parties? If not, should that provision be modified to change First Quarter to Second Quarter?

II. NOTICE OF FILINGS

The Commission establishes Docket Nos. MC2013-40 and CP2013-52 to consider the Request pertaining to the proposed Priority Mail Contract 55 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than March 4, 2013. The public portions of these filings can be accessed via the Commission's website (<http://www.prc.gov>).

The Commission appoints Lyudmila Y. Bzhilyanskaya to serve as Public Representative in these dockets.

III. ORDERING PARAGRAPHS

It is ordered:

1. The Commission establishes Docket Nos. MC2013-40 and CP2013-52 to consider the matters raised in each docket.
2. Pursuant to 39 U.S.C. 505, Lyudmila Y. Bzhilyanskaya is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).
3. Comments by interested persons in these proceedings are due no later than March 4, 2013.
4. Responses by the Postal Service to the Commission's request for supplemental information are due no later than March 1, 2013.

5. The Secretary shall arrange for publication of this Order in the *Federal Register*.

By the Commission.

Ruth Ann Abrams
Acting Secretary